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No. 93-359

In The

Supreme Court of the United States

October Term, 1993

JAMES E. SMITH,

Petitioner,

v.

THE CITY OF DEL MAR,

Respondent.

Petition For A Writ Of Certiorari To The Court Of Appeal, Fourth Appellate District, Division One, State of California

REPLY TO BRIEF IN OPPOSITION

JAMES E. SMITH
2100 Gatun Street
Del Mar, California 92014
(619) 755-7794
Propria Persona
For Petitioner

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

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Pursuant to Supreme Court Rule 15.6, the Petitioner, James E. Smith, respectfully submits this Reply to Brief in Opposition.

REQUEST FOR JUDICIAL NOTICE

Petitioner hereby requests this Court to take "Judicial Notice" of the Petition for Writ Of Certiorari, Case No. 93-488, filed in this Court on September 27, 1993, involving the same lots H, I & J, Final Map No. 1285 and court below.

ARGUMENT

THE CONTENTIONS RAISED BY PETITIONER HAVE BEEN PRESENTED TO THE LOWER COURTS

The Constitutional issues present in the case at bar have been the same throughout this litigation. Respondent City has utterly failed to address the contentions presented once again. Respondent's tack in opposing the Writ is to merely say the issues have for the first time been raised in this Court.

A review of Respondent's stated authority amply demonstrates that the grounds proffered by Respondent, in support of the position that this court does not have jurisdiction, simply do not exist.

Petitioner's posture from the inception of this litigation has been that the presumptions embodied in California Civil Code §§ 831 and 1112 have no "rational connection," by way of application, to the California Subdivision Map Act.

In *Fuller v. Oregon*, 417 U.S. 40 (1973) the Court therein noted that the question of sufficiency of the notice and hearing provided Petitioner was first raised at the Supreme Court. Id at p 50, Fn. 11. The present case clearly is not, *for the first time*, contending that §§ 831 and 1112 cannot be utilized to justify a Subdivision Map Act violation.

Similarly, in *Webb v. Webb*, 451 U.S. 493 (1980) this Court noted that "the record as a whole show[s] either expressly or by clear implication" that the due process claim was presented. The case at bar shows that both those criteria are present.

That the contentions and issues presented here are "Due Process" concerns is undisputable. (See Petition for Writ at pp 16 and 21 citing *Mobile, Jackson & Kansas City Railroad Company v. Turnipseed, Administrator,* 219 U.S. 35 (1910), and *Iran v. INS,* 656 F.2d 469 (1981) for authority that the conduct complained of is violative of "Due Process.")

The construction of the statutes involved in this case is an arbitrary one at the very least. Arbitrarily dispensing the law would seem to be at the core of any "Due Process" claim, as it is here.

Disallowance of this Petition on the grounds that a particular argument heading did not contain the specific language "Due Process" would itself offend the notion of "Due Process" if for no other reason than that it would be fundamentally unfair.

The record herein more than demonstrates that these contentions have been litigated ad infinitum in the lower courts. The Petition should be granted.

Respectfully submitted,

Dated: October 8, 1993 /s/ JAMES E. SMITH
JAMES E. SMITH
Propria Persona